

MEMORANDUM

Agenda Item No. 7(G)(2)(A)

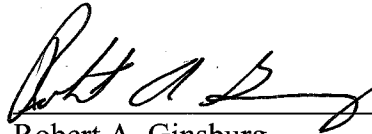
TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 20, 2005

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Resolution authorizing the
County Manager to form a
Not-for-Profit corporation to
be known as MDSC Homes,
Inc.

The accompanying resolution was prepared and placed on the agenda at the request
of Commissioner Dorrin D. Rolle.


Robert A. Ginsburg
County Attorney

RAG/jls



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 20, 2005

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(G)(2)(A)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(G)(2)(A)
1-20-05

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MANAGER TO FORM A FLORIDA NOT-FOR-PROFIT CORPORATION TO BE KNOWN AS MDSC HOMES, INC.; AND AUTHORIZING MDSC HOMES INC. TO CREATE A SUBSIDIARY AND AN AFFILIATED ENTITY OF SUCH CORPORATION; AND AUTHORIZING THE LEASING OF PROPERTY DESCRIBED IN EXHIBIT "A" TO MDSC HOMES, INC. FOR THE DEVELOPMENT OF AN AFFORDABLE HOUSE DEVELOPMENT

WHEREAS, on February 2, 1999, the BCC, through Resolution R-139-99, authorized the County Manager to apply for, receive and expend HOPE VI funds for the re-development of the former Scott-Carver Homes public housing site; and

WHEREAS, the high-density Scott Homes and Carver Homes multifamily developments will be replaced with one and two story townhouses, duplex and single family homes; and

WHEREAS, one of the components of the HOPE VI project will include a multifamily public housing rental development to be known as Scott-Carver Homes; and

WHEREAS, Scott-Carver Homes will be a new community consisting of 160 units of rental public housing that will be funded through Low Income Housing Tax Credits, HOPE VI funds and Replacement Housing Factor funds, with the majority of the development costs being funded by funds secured through the syndication of the Low Income Housing Tax Credits; and

WHEREAS, the new homes will be townhouse units dispersed in two (2) clusters in the multi-sector development in such a manner that the public housing development will be indistinguishable from the other on site developments; and

WHEREAS, due to the laws governing the Low Income Housing Tax Credits (LIHTC), the development cannot be owned directly by the County, but can be owned by an affiliate of the County; and

WHEREAS, this Board desires to create a non-profit entity to be named MDSC Homes, Inc. that will be eligible to apply for (LIHTC); and

WHEREAS, MDSC Homes, Inc. will develop the public-housing units on property presently owned by the County and will remain a County-controlled entity in perpetuity, as well as all the improvements built on the Land will remain as public housing; and

WHEREAS, MDSC Homes, Inc. and all its affiliates will be governed under all County Ordinances, Administrative Orders, and regulations, including procurement regulations,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby:

Section 1. Authorizes the County Manager to form and create MDSC Home Inc. as instrumentality of Miami-Dade County by the Miami-Dade Housing Agency as a Florida non-profit corporation in accordance with the documents attached hereto. The County Manager is further authorized to designate three County employees to serve as MDSC Homes, Inc. directors.

Section 2. Authorizes the County Manager to create subsidiaries and affiliated entities of MDSC Home, Inc., such as but not limited to Scott Carver Homes, Ltd., a Florida Limited Partnership, and to participate as a member or partner or shareholder of such entities.

Section 3. Approves the leasing of the property described in Exhibit A (the "Land") by Miami-Dade County to MDSC Home Inc. pursuant to a 99 year lease in substantially the form attached hereto as Exhibit B, and made a part hereof; and authorizes the County Manager

to execute same for and on behalf of Miami-Dade County; and authorize MDSC Homes, Inc. to sublet the Land to Scott- Carver Homes, Ltd.


Section 4. Allocates a maximum of \$16,000,000.00 of HOPE VI funds from Miami-Dade County to MDSC Homes, Inc. as construction and permanent financing for the development of the 160 units of family public housing at Scott-Carver Homes upon the Land.

Section 5. Allocates a maximum of \$5,200,000.00 of United States Department of Housing and Urban Development Replacement Housing Factor funds from Miami-Dade County to MDSC Homes, Inc. as construction and permanent financing for the development of 160 units of family public housing at Scott-Carver Homes upon the Land.

Section 6. Authorizes Scott-Carver Homes, Ltd., as the owner and affiliate of MDSC Homes, Inc. to apply for the Low Income Housing Tax Credits that are allocated by the Florida Housing Finance Corporation.

Section 7. Authorizes the County Manager to prepare and execute all documents and agreements, with the approval of the County Attorney's Office, to accomplish the purposes of this resolution provided that such documents and agreements clearly provide that the sole purpose of each of MDSC Homes, Inc and Scott-Carver Homes, Ltd. shall be to develop, own and operate the 160 unit public housing rental development to be know as Scott-Carver Homes.

Section 8. Authorizes the County Manager to prepare and execute any amendments, modifications, cancellations, renewal, and termination clauses of any documents or agreements on behalf of Miami-Dade County or MDSC Homes, Inc., or Scott-Carver Homes, Ltd., with the approval of the County Attorney's Office and provided that such documents are consistent with the purposes of this resolution.



The foregoing resolution was sponsored by Commissioner Dorrin D. Rolle and offered
by Commissioner _____, who moved its adoption. The motion was seconded
by Commissioner _____ and upon being put to a vote, the vote was as
follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Dr. Barbara Carey-Shuler
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day
of January, 2005. This Resolution and contract, if not vetoed, shall become effective in
accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Terrence A. Smith



EXHIBIT A

The West 406 feet of Tract 3 of “Public Housing Project Florida 5-4”, recorded in Plat Book 57, at Page 48, of the Public Records of Miami-Dade County, Florida.

and

All of Tract 1 of “Public Housing Project Florida 5-20”, recorded in Plat Book 84, at Page 31, of the Public Records of Miami-Dade County, Florida

EXHIBIT B GROUND LEASE AGREEMENT

This GROUND LEASE AGREEMENT ("LEASE") is made as of this ____ day of _____, 2004, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida. ("OWNER") and MDSC HOMES INC., a Florida not for profit Corporation ("LESSEE").

WITNESSETH:

WHEREAS, the OWNER owns the parcels of land located in Miami-Dade County and specifically and collectively defined in Exhibit A attached hereto and made a part hereof; and

WHEREAS, in accordance with Miami-Dade County Resolutions No. _____ the Owner has charged LESSEE with the authority and responsibility to, among other things, develop the PREMISES as Public Housing and to take related actions in furtherance of the Miami-Dade Housing Agency's mission, purpose and goals; and

WHEREAS, the OWNER and LESSEE mutually agree that all the units in the DEVELOPMENT shall be set aside as Public Housing within the meaning of Section 3(b) of the United States Housing Act of 1937, as amended (the "ACT"); and

WHEREAS, the OWNER and LESSEE mutually agree to comply with all applicable HUD policies and procedures and make all requisite submissions to the United States Department of Housing and Urban Development which may be required in connection with the transactions described herein.

NOW, THEREFORE, the parties hereto agree as follows:

That the OWNER, for and in consideration of the restrictions and covenants herein contained, hereby leases to the LESSEE and the LESSEE hereby agrees to lease from the OWNER the PREMISES described as follows for the sole purpose and term of years set forth herein:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Article I Definitions

1.1. Definitions. The following, terms shall have the following definitions in this Lease.

- 1) "ACC" means the Consolidated Annual Contributions Contract between HUD and the OWNER, as amended by the Mixed-Finance ACC

Amendment, dated of even date herewith and incorporating the Project Units as the same may be further amended from time to time.

- 2) "Act": The United States Housing Act of 1937 (42 U.S.C. § 1437, et seq.), as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.
- 3) "Applicable Public Housing Requirements" means all requirements applicable to public housing, including but not limited to the Act, HUD regulations thereunder (and, to the extent applicable, any HUD-approved waivers of regulatory requirements), the ACC, the Mixed Finance ACC Amendment, the HOPE VI grant agreement, HUD notices (including any notice of funding availability under which the owner receives an award of Hope VI Funds for use in connection with the Development), the HUD-approved Declaration of Trust and Restrictive Covenants in favor of HUD, the OWNER's admissions and occupancy policies applicable to the Development, as set forth in the OWNER's approved OWNER Plan under 24 CFR part 903, and all applicable Federal statutory, regulatory and executive order requirements, as those requirements may be amended from time to time and all pertinent Federal statutory, executive order, and regulatory requirements, as those requirements may be amended from time to time.
- 4) "Base Rent" is defined in Section 3.1 of this Lease.
- 5) "Base Interest Rate" means the "prime" interest rate announced from time to time in the Wall Street Journal, plus five percent (5%) per annum, but in no event greater than the legal rate of interest as defined in Florida statutes.
- 6) "Commencement Date" means _____, 2005.
- 7) "Consumer Price Index" means the revised Consumer Price Index for Urban Wage Earners and Clerical Workers for the geographic areas that includes the apartment complex (all items, 1984.2 = 100) promulgated by the United States Bureau of Labor Statistics of the United States Department of Labor.
- 8) "CPI Percentage" means the percentage equal to the difference between the Consumer Price Index most recently published as of the first day of the year in question, and the Consumer Price Index for 2003.
- 9) "County" means Miami-Dade County, a political subdivision of the State of Florida.
- 10) "Declaration of Trust" means the Declaration of Trust and Restrictive Covenants between the County and HUD imposing certain covenants and restrictions on the PREMISES.

- 11) "DEVELOPMENT" means the PREMISES and the Improvements thereon.
- 12) "Environmental Laws" means and refer to all Federal, state and local laws, ordinances, rules and regulations now or at any time hereafter in effect which regulate, relate to or impose liability or standards of conduct concerning any Hazardous Substances, including, without limitation, The Comprehensive Environmental Response Compensation and Liability ACT (42 USC § 9601 et. seq.) and The Resource Conservation and Recovery ACT (42 USC § 6901 et. seq.), and The Toxic Substances Control ACT (15 USC § 2601 et. seq.).
- 13) "Governing Documents" means the Declaration of Trust, this Lease, Miami-Dade County Resolutions and all applicable public Housing Requirements including, but not limited to, the Consolidated Annual Contribution Contract, the Regulatory and Operating Agreement, and other statutes, executive orders and regulations applicable to public housing, as the foregoing requirements may be amended from time to time.
- 14) "Hazardous Substances" means and include (a) any friable asbestos or asbestos-containing material, polychlorinated biphenyls, dioxins or urea formaldehyde foam insulation; (b) any petroleum or petroleum-derived products; (c) any waste, substance, material, pollutant or contaminant defined as hazardous or toxic in or for purposes of any Environmental Laws.
- 15) "HOPE VI Grant Agreement" means the HOPE VI Revitalization Grant Agreement relating to the revitalization of the Development, by and between HUD and the OWNER, dated as of October 17, 2000, as may be amended.
- 16) "HUD" means the United States Department of Housing and Urban Development.
- 17) "Improvements" means all betterments, buildings and improvements now or hereafter existing at the PREMISES, including, without limitation the affordable housing DEVELOPMENT to be developed on the PREMISES, including, any additional parking areas, walkways, landscaping, fencing, or other amenities at the PREMISES.
- 18) "Institutional Lender" shall be a savings bank, commercial bank, trust company, savings and loan association, insurance company, real estate investment trust, pension trust or fund established for a corporation listed on a United States Stock Exchange, for state or municipal employees or for a national trade union, an agency or authority of any federal, state, or local government, any quasi-public entity, and any private or nonprofit entity which provides financing for affordable housing.

- 19) "LESSEE's Personal Property" means any personal property of LESSEE located upon or used by LESSEE in connection with the PREMISES or the DEVELOPMENT, including without limitation:
- a. All tangible personal property located at or on or intended to be used in connection with the PREMISES or the DEVELOPMENT; all articles of personal property now or hereafter attached to or intended to be used in or about or in connection with the PREMISES or the DEVELOPMENT and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are or shall be attached to the PREMISES or the DEVELOPMENT;
 - b. All books and records relating to the operation of the PREMISES and the DEVELOPMENT.
 - c. Nothing in the preceding paragraph shall be construed to mean anything that may affect the rights held by HUD.
- 20) "Lease" means this Lease Agreement, as the same shall be amended from time to time.
- 21) "Lease Year" means, in the case of the first lease year, the period from the Commencement Date through December 31, 20____; thereafter, each successive twelve-calendar-month period following the expiration of the first lease year of the Term; except that in the event of the termination of this Lease on any day other than the last day of a Lease Year then the last Lease Year of the Term shall be the period from the end of the preceding Lease Year to such date of termination.
- 22) "Loan Documents" means the OWNER Loan Documents.
- 23) "Mixed Finance ACC Amendment" means the amendment to the Annual Contributions Contract to provide grant assistance for the Project.
- 24) "Permitted Mortgages" means subordinate liens securing loans made for development or financing of the development reasonable repairs or replacements necessary for the normal use and operation of the DEVELOPMENT held by any lender to which OWNER and HUD have consented in writing as to the terms and documentation for such loans. No other mortgages or other liens shall be permitted without prior written approval from OWNER and HUD.
- 25) "Permitted Subtenant" means Scott-Carver Homes, Ltd., or any other entity of person approved of in writing by the Owner as a subtenant to the LESSEE.

- 26) "Permitted Mortgagee" means the OWNER, and any holder of a Permitted Mortgage.
- 27) "OWNER" ("Public Housing Authority") means Miami-Dade County, by and through its department, the Miami-Dade Housing Agency.
- 28) "PREMISES" means the parcels of land in Miami-Dade County, Florida described herein in Exhibit A attached hereto, together with all necessary easements for utilities, sewer and drainage.
- 29) "Regulatory and Operating Agreement" means the Regulatory and Operating Agreement for Scott Carver Homes to be entered into between the LESSEE and the OWNER, pursuant to which the LESSEE shall receive with respect to the DEVELOPMENT the benefit of certain operating subsidies provided to the OWNER by HUD pursuant to the ACC.
- 30) "Rent" means Base Rent plus Additional Rent.
- 31) "State" means the State of Florida.
- 32) "Taking" means any taking of the title to, access to, or use of the PREMISES or any portion thereof by any governmental authority or any conveyance under the threat thereof, for any public or quasi-public use or purpose. Takings may be total or partial, permanent or temporary.
- 33) "Tenant" means a resident of the DEVELOPMENT.

Article II

PREMISES AND TERM

2.1 PREMISES. OWNER hereby leases and demises to LESSEE and LESSEE hereby leases from OWNER, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, the PREMISES.

2.2 Term. This Lease shall be for a minimum term (i) commencing on the date of this Lease ("Commencement Date"), and (ii) unless otherwise provided by law, terminating on the latest to occur of: (A) ninety-nine years (99) years; (B) expiration of the minimum period during which the Public Housing Units are required by law to be operated as public housing in accordance with the Act.

Article III RENT

3.1 Base Rent. LESSEE shall pay OWNER Base Rent of One Dollar (\$1.00) per annum, payable upon the execution hereof and upon the first day of each calendar year hereafter for the Term of the Lease.

3.2 Additional Rent.

(a) In order that the Base Rent shall be absolutely net to OWNER, LESSEE covenants and agrees to pay, as Additional Rent, and without set-off, abatement, suspension or deduction, all taxes, payments in lieu of taxes, betterment assessments, water and sewer rents and charges, liens, insurance, maintenance, repairs, utilities charges and all other operating expenses. LESSEE further covenants and agrees to pay, as Additional Rent, without set-off, abatement, suspension or deduction, all other costs, general and special, ordinary and extraordinary, foreseen and unforeseen, which are due and payable during the Term hereof at any time imposed or levied against the PREMISES.

(b) LESSEE will furnish to OWNER, once per year, concurrently with OWNER's annual review of LESSEE's financial statements, proof of payment of all items referred to in Section 3.2 of this lease which are payable by LESSEE; provided, that LESSEE will in addition furnish to OWNER proof of payment of any taxes or payments in lieu thereof and proof of payment of insurance premiums promptly after demand therefore.

ADDITIONAL RENT INCLUDES:

3.2.2 Real Estate Impositions.

(a) LESSEE shall pay, directly to the authority charged with the collection thereof, all taxes, or payments in lieu thereof in accordance with the provisions of law, and each installment of all assessments levied or assessed by or becoming payable to any governmental authority having jurisdiction over the DEVELOPMENT, for or in respect of the PREMISES and all Improvements constructed thereon (such taxes and installments of assessments being hereinafter together referred to as "Real Estate Impositions") for each tax or installment period wholly included in the Term, all such payments to be made not less than 5 days prior to the last date on which the same may be paid without interest or penalty; and for any fraction of a tax or installment period included in the Term at the beginning or end thereof, LESSEE shall pay to OWNER, within 10 days after receipt of invoice therefore, the fraction of such taxes or installment which is allocable to such included period.

(b) If LESSEE shall elect to contest the payment of any Real Estate Imposition, LESSEE may make such payment under protest or, if postponement of such payment will not jeopardize OWNER's title to the PREMISES, or subject OWNER to the risk of any criminal liability or civil liability or penalty, LESSEE may postpone the same

provided that it shall secure such payment and the interest and penalties thereon and the costs of the contest on the determination or the proceedings or suit in which such contest may be had, by causing to be delivered to OWNER cash or other security in form and amount satisfactory to OWNER, or a bond of indemnity of a good and solvent surety company, in form and amount satisfactory to OWNER. Either party paying any Real Estate Imposition shall be entitled to recover, receive and retain for its own benefit all abatements and refunds of such Real Estate Imposition, unless it has previously been reimbursed by the other party. LESSEE agrees to indemnify, defend and save OWNER harmless from all costs and expenses incurred on account of LESSEE's participation in such proceedings or as a result of LESSEE's failure to pay real estate taxes and other related charges with respect to the DEVELOPMENT. OWNER, without obligating itself to incur any costs or expenses in connection with such proceedings, shall cooperate with LESSEE with respect to such proceedings so far as reasonably necessary. Neither party shall discontinue any abatement proceedings begun by it without first giving the other party written notice of its intent to do so and reasonable opportunity to be substituted in such proceedings. OWNER shall promptly furnish to LESSEE a copy of any notice of any Real Estate Imposition received by OWNER.

(c) In the event LESSEE fails to make any payment referred to in this Section 3.2.1 when due, the OWNER shall have the right after 10 days notice to LESSEE to make any such payment on behalf of LESSEE and charge LESSEE therefore, together with interest thereon from the date of payment at the Base Interest Rate.

(d) Nothing contained in this Lease shall require LESSEE to pay any franchise, corporate, estate, inheritance, succession, capital levy or transfer tax of OWNER, or any income, profits or revenue tax or charge upon the rent payable by LESSEE under this Lease.

3.2.3 Utilities. LESSEE shall pay or cause to be paid all charges for water, gas, sewer, electricity, light, heat or power, telephone or other service used, rendered or supplied to LESSEE in connection with the DEVELOPMENT and shall not contract for the same in OWNER's name.

3.2.4 Other. LESSEE covenants to pay and discharge, when the same shall become due, as Additional Rent, all other amounts, liabilities, and obligations which the LESSEE assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added for nonpayment or late payment thereof (provided that LESSEE shall not be liable for any payment or portion thereof which OWNER is obligated to pay and which payment OWNER has failed to make when due); and, in the event of any failure by LESSEE to pay or discharge the foregoing, OWNER shall have all the rights, powers and remedies provided herein, by law or otherwise in the case of nonpayment of Rent.

Article IV
INDEMNITY, LIENS AND INSURANCE

4.1 Indemnification.

(a) Subject to Section 14.2 of this Agreement, LESSEE agrees to pay and to defend, indemnify and hold harmless the OWNER and its, employees, agents, officers, directors, volunteers and instrumentalities or other persons serving in an advisory capacity to any of them from any and all liabilities, losses, damages, causes of action or proceedings of any kind, suits, claims, demands, judgments, liens, including reasonable attorney's fees, reasonable expert's fees, costs of defense, and expenses of any kind or any nature whatsoever, known or unknown, foreseen or unforeseen, arising out of, relating to or resulting from the performance of this LEASE by the LESSEE or its employees, agents, servants, partners, principals, or subcontractors which may at any time be imposed upon, incurred by, or asserted or awarded against OWNER, its employees, agents, officers, or directors, from:

(i) Any injury to or death of or claim of injury to or death of any person or any damage to or loss of or claim of damage to or loss of property at the Improvements or the PREMISES or on adjoining sidewalks, streets or ways, in each case growing out of or connected with the use, non-use, possession, Ownership, condition or occupation of the PREMISES, the Improvements or any part thereof from and after the date hereof until any governing statute of limitations has expired or the expiration of the Lease Term, whichever is longer;

(ii) Violation of any agreement or condition of this Lease by LESSEE which causes substantial harm to the OWNER;

(iii) Violation by LESSEE of any contract or agreement to which LESSEE is a party which causes substantial harm to the OWNER;;

(iv) Violation by LESSEE, its employees, agents, or Tenants, or invitees of any of them, of any restriction, statute, law, ordinance or regulation, including without limitation, all environmental laws relating to the presence, release or threat of release of oil or any Hazardous Substances in each case affecting the PREMISES or the Improvements or any part thereof or the Ownership, occupancy or use thereof from and after the date hereof, provided, that LESSEE shall not have any liability to OWNER for any loss or damage arising out of any release of Hazardous Substances for which OWNER is responsible under Section 7.3 hereof.

(b) LESSEE shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the OWNER, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon. LESSEE expressly understands and agrees that any insurance protection required by this LEASE or otherwise provided by LESSEE shall in no way limit the responsibility to indemnify, keep and save harmless and defend the OWNER and its, employees,

agents, officers, directors, volunteers and instrumentalities or other persons serving in an advisory capacity to any of them.

(c) OWNER shall give LESSEE prompt and timely notice of any claim made or suit instituted against it or any other party of which it has knowledge, relating to any matter which in any way may result in indemnification pursuant to this Section 4.1. The obligations of LESSEE under this Section 4.1 shall survive the expiration or earlier termination of the term of this Lease.

4.2 Liens.

(a) LESSEE shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms, and corporations doing any work, furnishing any materials or supplies or renting any equipment to LESSEE or any of its contractors or subcontractors in connection with the construction, reconstruction, furnishing, repair, maintenance or operation of the DEVELOPMENT, and in all events will bond or cause to be bonded, with surety companies reasonably satisfactory to the OWNER, or pay or cause to be paid in full forthwith, any mechanic's, materialmen's or any other lien or encumbrance that may arise, whether due to the actions of LESSEE or any person other than the OWNER, against the DEVELOPMENT or the PREMISES other than mortgages permitted by Section 9.1 hereof.

(b) LESSEE shall have the right to contest any such lien or encumbrance by appropriate proceedings which shall prevent the collection of or other realization upon such lien or encumbrance so contested, and the sale, forfeiture or loss of the DEVELOPMENT to satisfy the same, provided that such contest shall not subject OWNER to the risk of any criminal liability or civil penalty, and provided further that LESSEE shall give such reasonable security as may be requested by OWNER to insure payment of such lien or encumbrance and to prevent any sale or forfeiture of the PREMISES by reason of such nonpayment, and LESSEE hereby indemnifies OWNER for any such liability or penalty. Upon the termination after final appeal of any proceeding relating to any amount contested by LESSEE pursuant to this Section 4.2. LESSEE shall immediately pay any amount determined in such proceeding to be due, and in the event LESSEE fails to make such payment, OWNER shall have the right after 5 days notice to LESSEE to make any such payment on behalf of LESSEE and charge LESSEE therefore, together with interest thereon from the date of payment at the Base Interest Rate.

(c) Lessee shall secure and furnish to Owner releases of liens for all work done by any person at the Development that could cause a lien under Florida's Construction Lien Law to be placed upon the Development.

(d) Nothing contained in this Lease shall be construed as constituting the consent or request of OWNER, expressed or implied, to or for the performance of any labor or services or the furnishing of any materials for construction, alteration, addition, repair or demolition of or to the DEVELOPMENT or of any part thereof. Notice is hereby given that OWNER will not be liable for any labor, services, or materials

furnished or to be furnished to LESSEE, or to anyone holding the DEVELOPMENT or any part thereof through or under LESSEE, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the fee interest of OWNER in and to the PREMISES.

4.3 Insurance Requirements. Beginning on the date of this Lease and continuing until the expiration or earlier termination of the Term, LESSEE shall show evidence of carrying at all times such liability, worker's compensation, property and other insurance coverage with respect to the PREMISES and the Improvements thereof, and any other insurable property and equipment therein or thereon (all of the above known as "Insurable Property"). LESSEE shall furnish to OWNER's General Services Administration, c/o Risk Management Division, 111 N.W. 1st Street, Suite 2340, Miami, Florida 33128-1989, original Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

(i) Public Liability Insurance on a comprehensive basis in an amount not less than \$100,000.00 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage;

(ii) Umbrella liability insurance coverage on an occurrence form, covering losses in excess of the primary general liability, auto liability and employer's liability coverages, in an amount not less than \$10,000,000, or such other amount as may be reasonably acceptable to OWNER.

(iii) Workers' compensation insurance required by law in respect of any work performed by LESSEE's employees on or about the PREMISES and the Improvements.

(iv) Fire and extended coverage insurance and additional "Special Perils" insurance (including earthquake coverage written on a full replacement cost basis or such lesser amount as may be reasonably available in the insurance market at reasonable premiums) in amounts sufficient to comply with any co-insurance clause applicable to the location and character of the Insurable Property and in any event in amounts not less than one hundred percent (100%), of the then repair and replacement cost of the Insurable Property, with commercially reasonable deductibles, and with a joint loss agreement if a separate boiler and machinery policy is secured with a separate carrier pursuant to clause (v) below. Replacement cost values should be determined annually by a method acceptable to the insurance company providing coverage, provided that independent appraisals are conducted at least every five years by an appraiser to be mutually agreed upon by OWNER and LESSEE.

To the extent not covered by all-risk property insurance, broad "comprehensive" form coverage for all boilers or other pressure vessels used on the PREMISES, equipment, and machinery, apparatus and leased equipment. Coverage shall be provided on a replacement cost and agreed amount basis, in an amount satisfactory to OWNER. A

joint loss agreement shall be provided if the boiler and machinery policy is issued by a carrier different than that issuing the property policy; Flood insurance if at any time the PREMISES are located in any federally designated "special hazard area" (including any area having special flood hazards, as shown on a Flood Hazard Boundary map or a Flood Insurance Rate Map published by the Federal Emergency Management Agency) in an amount equal to the full replacement cost or the maximum amount then available under the National Flood Insurance Program.

(v) LESSEE shall provide or cause its Subcontractors to provide original policies indicating the following types of insurance coverage prior to any construction Completed Value Builder's Risk Insurance on an "All Risk" basis in an amount not less than one hundred (100%) percent of the insurable value of the building(s) or structure(s). The policy shall be in the name of Miami- Dade County and the Developer.

(vi) Automobile liability insurance, with a minimum primary limit of \$5,000,000 per accident.

(vii) LESSEE shall require any contractor (or subcontractor thereof or professional) to carry commercial general liability, auto liability, workers compensation insurance with the scope of coverage and other provisions as described above. Such general liability and auto liability coverages shall include the LESSEE and OWNER as additional insured. LESSEE shall obtain and keep on file updated certificates of insurance, which show that the contractor or subcontractor is so insured and OWNER shall have the right, from time to time, upon request, to review such contractor and subcontractor information.

(viii) LESSEE shall require any architect, engineer, or other person or entity providing professional services to LESSEE and/or employed in connection with the maintenance of the PREMISES and the Improvements, or in the construction of the Improvements, to carry professional liability (errors and omissions) insurance in an amount not less than (a) \$5,000,000 per occurrence providing for all sums which the LESSEE and/or the design professional shall become legally obligated to pay as damages for claims arising out of the services performed by the LESSEE or any person employed by the LESSEE in connection with this Agreement; and (b) following final completion of the DEVELOPMENT as described in the Governing Documents, such amount as OWNER may reasonably require after consultation with LESSEE, taking into account the cost of the Improvements being constructed at the PREMISES. LESSEE shall obtain and keep on file updated certificates of insurance, which show that the architect, engineer or other such professional is so insured.

All such insurance under (x) and (xi) above shall contain such contingent liability endorsements as shall make such insurance congruent with the fire and extended coverage insurance required by clause (iv) of this Section 4.3. The minimum coverages stated in this Section shall be reviewed annually by OWNER and LESSEE and shall be

increased by mutual agreement at such intervals if such increases are necessary to reflect inflation or changes in the nature or degree of risks insured.

4.4 Insurance Provisions. Insurance maintained by LESSEE pursuant to the requirements of Section 4.3 shall:

- (i) Be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business under the laws of the State of Florida and rated no less than "B" as to management, and no less than "Class V" as to strength, by the latest edition (1986 or later) of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or equivalent subject to the approval of the OWNER. The insurance company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized and Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and must be members of the Florida Guaranty Fund;
- (ii) Have attached thereto a clause making the loss payable to the LESSEE, OWNER, and Permitted Mortgagees, if any, as their respective interests may appear;
- (iii) Be written to become effective at the time LESSEE becomes subject to the risk or hazard covered thereby, and shall be continued in full force and effect for such period as LESSEE is subject to such risk or hazard;
- (iv) If available, provide for waiver of subrogation and payment of losses to LESSEE, OWNER, respectively, notwithstanding any act of negligence of LESSEE or OWNER.
- (v) If there is a conflict between the Lease's insurance sections, with respect to restoration of the property after a casualty, and "Section 10 of that certain Mixed-Finance Amendment to Consolidated Annual Contributions Contract, dated as of the date of this Lease by and between the OWNER and LESSEE and the United States of America, Secretary of Housing and Urban Development (the "ACC Amendment"), the provisions of Section 10 of the ACC Amendment shall control."
- (vi) Certificates shall indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder. Compliance with the foregoing requirements shall not relieve LESSEE of its liability and obligations under this Section or under any other section of this Agreement.
- (vii) Modification or waiver of any of the aforementioned insurance requirements is subject to the approval of the OWNER's Risk Management Division.
- (viii) LESSEE shall notify the OWNER of any intended changes in insurance coverage, including any renewals of existing policies. The OWNER reserves the right to inspect the Provider's original insurance policies at any time during the term of this Agreement.

4.5 Waivers of Insured Claims. Each of OWNER and LESSEE hereby waives all rights of recovery against the other for loss or injury against which the waiving party is protected by insurance, but only to the extent of insurance proceeds received in connection with such loss or injury, and only to the extent permitted by the applicable insurance policy.

4.6 Additional Provisions. The following provisions shall apply to the insurance coverages described above:

(a) For all liability insurance coverage, OWNER, its employees, agents officers, directors, shareholders and partners are to be covered as additional insured as respects liability arising out of PREMISES occupied, used or owned, in whole or in part, by LESSEE.

(b) All policies required hereunder shall be endorsed to provide for a minimum 30-day notice of cancellation, non-renewal or material modification to LESSEE, OWNER, and Permitted Mortgagees, if any.

(c) No policy required hereunder shall have a deductible that exceeds \$10,000.00 per incident.

(d) LESSEE shall deliver annually certificates of insurance evidencing the existence of all required coverages, where applicable. LESSEE shall deliver to OWNER, upon OWNER's written request, but no more frequently than annually, complete copies of all original policies and endorsements.

(e) In addition to notifying its insurer(s) in accordance with each policy, LESSEE shall provide prompt written notice to OWNER as soon as reasonably possible of accident or loss relating to the PREMISES likely to exceed \$25,000.

4.7 Provisions regarding Permitted Mortgagees. Notwithstanding any provision of this Article IV, no Permitted Mortgagee shall have any liability under this section unless and until such Permitted Mortgagee takes title to LESSEE's interest hereunder or becomes mortgagee in possession of LESSEE's interest hereunder.

Article V
USE; REPAIRS AND ALTERATIONS

5.1 Use and Assignment.

(a) LESSEE covenants, promises and agrees that during the Term of this Lease it shall continuously use and operate the PREMISES, the Improvements and any part thereof only for the following uses, and such other uses as are reasonably and customarily attendant to such use: construction, development, marketing for lease and leasing of the units in the DEVELOPMENT in a manner which satisfies the requirements of this Lease and the Applicable Public Housing Requirements and consistent with the requirements of the Governing Documents, and shall comply at all times with the Governing Documents. In connection with such uses, LESSEE shall construct the Improvements and make such other repairs, renovations and betterments to the PREMISES as it may desire, all at its sole cost and expense, in accordance with the Governing Documents, in a good and workmanlike construction manner, with new code-approved materials and equipment, and in conformity with all applicable federal, state, and local laws, ordinances and regulations.

(b) This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the OWNER and the LESSEE, except that LESSEE may not assign or sublet its interest in this Lease without the prior written consent of the OWNER. Any attempted transfer without such consents shall be null and void. Notwithstanding the foregoing, OWNER'S consent is not required for a transfer to Scott Carver Homes, Ltd.

5.2 Repairs. LESSEE shall, at its sole cost and expense, keep the PREMISES and the adjoining sidewalks, curbs, and passageways free from unlawful obstructions, and will keep the Improvements in good condition and repair, normal wear and tear, casualty and condemnation excepted, and will make all necessary or appropriate repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen, including but not limited to maintenance and repair of the roof, plumbing, electrical wiring, air conditioning and heating equipment, maintenance of surface pavement, if any, painting of the walls or the Improvements upon first delivering to OWNER written plans and specifications for all such work and obtaining the written approval of OWNER as to the materials to be used and the manner of making such repairs. OWNER shall not unreasonably withhold or delay its approval of said repairs proposed to be made by LESSEE. All repairs shall be made in a good and workmanlike manner and in compliance with all applicable permits and authorizations and building and zoning laws and with all other laws, rules, regulations, and ordinances governing such work. The necessity for and adequacy of repairs to the Improvements shall be measured by the standard which is appropriate for buildings of similar construction and class, provided that LESSEE shall in any event make all repairs necessary to avoid any structural damage or injury to any of the Improvements. All repairs made by LESSEE shall be equal in quality and class to the original work.

OWNER shall not under any circumstances be required to furnish any services or facilities or to make any repairs, replacements or alterations of any nature or description on or to the PREMISES whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen, or to make any expenditure whatsoever in connection with this Lease or to maintain the PREMISES in any way. LESSEE hereby waives the right to make repairs at the expense of the OWNER pursuant to any law in effect at the time of the execution of this Lease or thereafter enacted, and assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the PREMISES.

5.3 Alterations. After completion of construction of the Improvements, LESSEE shall not construct any improvements, alterations, or perform any demolition, make any change to the PREMISES, including any additions, alterations or demolition to the Improvements or access drives, parking areas and landscaped areas the cost of which would exceed \$100,000, adjusted by the CPI Percentage; nor, except for the grant of public ways, easements or other rights in the streets, sidewalks and utility easements to be constructed by LESSEE, shall LESSEE grant any right, license or easement to any third party to use any portion of the PREMISES, including the Improvements, driveways and parking areas thereon, without the express prior written consent of the OWNER, which consent shall not be unreasonably withheld or unduly delayed, provided OWNER is first provided reasonable plans and specifications for the proposed work and commercially reasonable evidence of LESSEE's ability to finance or cause such construction to be financed upon completion. Any substantial or material modifications to the work approved by OWNER pursuant to the foregoing shall similarly require OWNER's consent. OWNER's consent may be reasonably conditioned on LESSEE's provision of protections including, but not limited to, performance and completion bonds and insurance programs and coverage reasonably required by OWNER.

5.4 Compliance with Law. LESSEE shall, at its expense, perform all its activities on the PREMISES in compliance, and shall cause all occupants of any portion thereof to comply, with applicable laws, ordinances, codes and regulations affecting the PREMISES or its uses, as the same may be administered by authorized governmental officials. OWNER shall, without expense to OWNER absent consent therefore, cooperate with LESSEE in obtaining all required licenses, permits and the like, and shall sign all papers and documents at any time needed in connection therewith, including without limitation, such instruments as may be required for the laying out, maintaining, repairing, replacing and using of water, gas, electric, telephone, drain or other utilities.

5.5 Mechanics' Liens. LESSEE shall at all times keep the PREMISES free and clear of mechanic's liens or other liens for work, labor, services or materials. In the event that any such lien shall be filed, LESSEE shall procure the release or discharge thereof or bond or insure over such lien in a manner reasonably acceptable to OWNER within sixty (60) days either by payment or in such other manner as may be prescribed by law, and shall hold OWNER harmless from and indemnified against any, loss or damage related thereto.

5.6 Ownership Of Improvements/Surrender Of PREMISES. The Improvements, including fixtures, shall be or become part of the PREMISES upon completion of construction, but such Improvements shall be owned by the LESSEE until the expiration or earlier termination of the Term of this Lease, and during the Term, LESSEE alone shall be entitled to the tax attributes thereof, including, but not limited to, depreciation deductions and low income housing tax credits thereon for income tax purposes. At the expiration or earlier termination of the Term of this Lease or any portion thereof, LESSEE shall peaceably leave, quit and surrender the PREMISES and the Improvements thereon (or the portion thereof so terminated), subject to the rights of the OWNER tenants in possession of residential units. Subject to the rights of the Permitted Mortgagees, upon such expiration or termination the PREMISES and the Improvements thereon (or portion thereof so terminated) shall become the sole property of OWNER at no cost to OWNER and shall be free of all liens and encumbrances and in good condition, subject only to reasonable wear and tear (consistent with prudent and appropriate property management and maintenance during the Term) and, in the event of a casualty, to the provisions of Article VI hereof.

Article VI

CASUALTY AND TAKING

6.1 Casualty. If any Improvements from time to time constructed on the PREMISES are damaged or destroyed by fire windstorm, or other casualty that may arise by acts of God or Man, LESSEE shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction, subject to the requirements of the Loan Documents and the Governing Documents, subject to the Governing Documents and, to the extent not inconsistent with the Governing Documents, to the Loan Documents (in order of recorded priority) and unless otherwise determined in accordance with Section 6.3, LESSEE shall repair, restore or reconstruct any Improvements so damaged or destroyed to their condition at the time of such damage or destruction and the insurance proceeds and any other funds so collected shall be used and expended by LESSEE for such purpose.

6.2 Commencement and Completion of Restoration. When reconstruction or repair of the Improvements or any portion thereof, which have been destroyed or damaged, is required by the provisions of this Article, such reconstruction or repair shall be commenced within a period not to exceed ninety (90) days after the insurance proceeds have been received by or made available to LESSEE (or, if the conditions then prevailing require a longer period, such longer period as shall reasonably be required by LESSEE proceeding with due diligence), and the LESSEE shall diligently prosecute such reconstruction or repair to completion, such reconstruction or repair to be completed within eighteen (18) months after the commencement thereof. In the event that restoration of the facility displaces any number of residents from their living quarters, LESSEE shall relocate said residents to decent, safe and sanitary replacement housing as is made available.

6.3 Determination of Whether or Not to Restore. In the event of substantial damage or destruction by a casualty insured against (i) which damage, LESSEE and OWNER in good faith determine is such that the reconstruction of economically viable improvements is not practicable, either because (a) the insurance proceeds, together with such funds of LESSEE as are demonstrably available for the purpose of paying for repair and restoration, are not sufficient to repair such loss or damage (provided that in all events LESSEE shall have been in full compliance with the insurance requirements of this Lease), or (b) such repair or restoration cannot be carried out in accordance with applicable law, such as then-current building or zoning law, or (c) the mortgagee with the right to control the disbursement of such proceeds has refused to release such proceeds to LESSEE for restoration or repair, or (ii) which damage occurs during the last ten (10) years of the Term, then LESSEE, subject to the Loan Documents, shall have the right to terminate this Lease upon 30 days' notice to OWNER in which event the Insurance Proceeds shall be payable as set forth in Section 6.4. If LESSEE does not so terminate this Lease, then LESSEE shall provide or cause to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration.

6.4 Allocation of Proceeds. If such casualty occurs and LESSEE elects to terminate the Lease in accordance with Section 6.3, the net insurance proceeds shall be allocated in the following order of priority: First, to OWNER in the amount of any then outstanding Base or Additional Rent or other imposition hereunder owed by LESSEE; Second, to the Permitted Mortgagees in the amount of any outstanding amounts secured by their respective mortgages and in their respective order of priority, to the extent required under such mortgages; Third, in accordance with HUD requirements, in consideration of the use of public housing DEVELOPMENT funds to finance the DEVELOPMENT, the balance of the proceeds, if any, shall be distributed to OWNER and to LESSEE in accordance with the value of their respective estates in the PREMISES determined as of the date of the casualty, but without regard to the termination of the Lease, the values of OWNER's and LESSEE's estates to be agreed upon by the OWNER and the LESSEE, or in the absence of such agreement to be determined by appraisal in the manner used to determine the allocation of a Net Condemnation Award, as set forth in Section 6.7 below.

6.5 LESSEE's Responsibilities on Termination. If LESSEE terminates this Lease following a casualty in accordance with Section 6.3, LESSEE, at its sole expense, shall deliver to OWNER at OWNER's expense any plans or other technical materials related to the PREMISES, prepared by or for LESSEE or in LESSEE's possession. LESSEE shall surrender the PREMISES to OWNER in accordance with Section 5.5 of this Lease and, upon the payment of the Insurance Proceeds to OWNER and/or the Permitted Mortgagees as their interests may appear, this Lease shall be terminated without liability or further recourse to the parties hereto, except as otherwise provided herein, provided that any Rent payable hereunder or obligations under Section 3.2 or Section 4.1 hereof owed by LESSEE to OWNER as of the date of said termination shall be paid or otherwise carried out in full.

6.6 Notice of Taking. Forthwith upon receipt by either OWNER or LESSEE of notice of the institution of any proceedings for a Taking, the party receiving such notice shall promptly give notice thereof to the other, and such other party may also appear in such proceeding and be represented by counsel, who may be counsel for the party receiving such notice.

6.7 Special Account. The full amount of any award whether pro tanto or final for any Taking (the "Award"), shall, notwithstanding any allocation made by the awarding authority, be paid, and allocated as set forth below provided that there shall first be deducted from the Award in the order stated (i) all reasonable fees and expenses of collection, including but not limited to, reasonable attorneys' fees and experts' fees, which shall be paid to the party which has incurred such fees and expenses, (ii) any Rent or impositions under Article 3 outstanding prior to the Taking, which shall be paid to OWNER, (iii) any outstanding amounts secured by Permitted Mortgages to the extent required under such Permitted Mortgages, which shall be paid to the Permitted Mortgagees in their respective order of priority. With respect to the balance of such award, OWNER and LESSEE shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated among the OWNER and the LESSEE respective interests in any condemnation proceedings, or as may be otherwise agreed among the OWNER and the LESSEE, taking into consideration the fact that OWNER's interest in the PREMISES is limited to the land (exclusive of the Improvements, except to the extent of OWNER's interest in the use and maintenance of the Public Housing Assisted Units, as encumbered by the Lease, and a reversionary interest in the PREMISES upon the expiration of the term. If the condemning authority does not make separate awards, any award remaining after payments as specified above ("Net Condemnation Award") will be allocated between the OWNER and the LESSEE by agreement. If the parties are unable to agree as to the exact amount of such allocation, the OWNER and LESSEE, each select an independent M.A.I. real estate appraiser (an "Appraiser"). Each Appraiser shall separately determine the amount of the balance of the Net Condemnation Award that is to be allocated to the interests of each party. If the percentage of the balance of the Net Condemnation Award each Appraiser allocates to OWNER (a) are within ten percent (10%) of each other, the two (2) allocations shall be averaged, and such average shall be the final allocation of the Net Condemnation Award, or (b) are not within ten percent (10%) of each other, the two Appraisers shall then select a third Appraiser, who shall independently allocate the Net Condemnation Award between OWNER and LESSEE, and the middle of such three (3) allocations shall be the final allocation of the Net Condemnation Award.

6.8 Total Taking. In the event of a permanent Taking of the fee title to the PREMISES or of the entire leasehold estate hereunder (a "Total Taking"), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, provided that any Rent or other impositions hereunder payable or obligations owed by LESSEE to OWNER as of the date of said Total Taking shall be paid or otherwise carried out in full; and the Award shall be allocated in accordance with Section 6.7.

6.9 Partial Taking: Procedures and Criteria for Course of Action. In the event of a permanent Taking of less than all of the PREMISES (a "Partial Taking");

(i) If OWNER and LESSEE reasonably determine that the continued use and occupancy of the remainder of the PREMISES by LESSEE is or can reasonably be made to be economically viable, structurally sound, consistent with the Governing Documents, and otherwise feasible based upon the amount of the Award and any available other funds of LESSEE as, at LESSEE's option, are demonstrably available for the purpose of paying for such restoration (the "Restoration Criteria"), then the PREMISES and the Improvements shall be restored pursuant to Section 6.10 hereof.

(ii) If, the foregoing parties agree that the continued use and occupancy of the remainder of the PREMISES and/or the Improvements by LESSEE is not or cannot reasonably be made to be economically viable, structurally sound, consistent with the Governing Documents, and otherwise feasible, then this Lease shall be terminated pursuant to Section 6.11 hereof and the Award shall be applied in accordance with Section 6.7 hereof. If the parties cannot agree, then the matter shall be resolved through arbitration subject to the rules and procedures of the American Arbitration Association.

6.10 Restoration. If a decision is made pursuant to Section 6.9 to restore the remainder of the PREMISES, and/or Improvements, as applicable, OWNER, and LESSEE shall reasonably agree upon and approve plans and specifications to modify the remaining PREMISES, and/or Improvements, as applicable. Upon approval of said plans, LESSEE shall promptly proceed, at its expense, to commence and complete the restoration pursuant to the provisions of Section 6.2 hereof. LESSEE shall use the entire Award for such restoration; provided, however, any portion of Award remaining, after the completion of the restoration shall be applied in accordance with Section 6.7 hereof, subject to the rights of the OWNER to require that any such excess be applied first to the extent necessary to pay any outstanding Rent owed by LESSEE to OWNER pursuant to this Lease. Any restoration shall be undertaken, to the extent practical, so that the OWNER-Assisted Units are not adversely affected or treated disparately from other parts of the Improvements.

6.11 Termination upon Non-Restoration. Following a Partial Taking, if a decision is made pursuant to Section 6.9 hereof that the remaining portion of the PREMISES is not to be restored, LESSEE shall surrender the entire PREMISES and all Improvements thereon to the OWNER and this Lease shall thereupon be terminated without liability or further recourse to the parties hereto, provided that any Rent (including, Base Rent and Additional Rent) and other amounts payable or obligations owed by LESSEE to OWNER under Article Three or Section 4.1 hereof as of the date of the Taking shall be allocated in accordance with Section 6.7.

Article VII

CONDITION OF PREMISES

7.1 Condition, Title. The PREMISES are demised and let in an "as is" condition as of the Closing Date. The PREMISES are demised and let to LESSEE subject to:

- (a) Zoning regulations, restrictions, rules, laws and ordinances now in effect or hereafter adopted by any governmental authority; and
- (b) The Governing Documents.

7.2 Quiet Enjoyment. OWNER covenants and agrees with LESSEE that so long as LESSEE is not in default beyond any applicable notice, cure or grace period, LESSEE shall and may, at all times during the term and all extended terms, if any, peaceably and quietly have, hold and enjoy the PREMISES and all rights, appurtenances and privileges belonging or in any way appertaining thereto for the uses permitted in Section 5.1 hereof without hindrance or molestation; provided that the OWNER, the County, HUD and their respective agents may enter upon and examine the PREMISES as provided herein.

7.3 Pre-Existing Environmental Conditions. OWNER shall be responsible for and agrees to indemnify LESSEE from and against any and all loss, cost, damage or expense (including reasonable attorneys' fees) arising out of or related to any Hazardous Substances on, in, under or affecting all or any portion of the PREMISES, which exist as of the date of this Lease.

Article VIII

DEFAULTS

8.1 Default. The occurrence of any of the following events shall constitute an event of default ("Event of Default") hereunder:

- (i) If LESSEE fails to pay when due any Rent or other Additional Rents due hereunder pursuant to Section 3.2 in its entirety of this Lease and any such default shall continue for thirty (30) business days after the receipt of written notice thereof by LESSEE; or if LESSEE fails to observe or perform any covenant, condition, agreement or obligation hereunder not addressed by any other event described in this Section 8.1, and shall fail to substantially cure, correct or remedy such failure within thirty (30) days after the receipt of written notice thereof, unless such failure cannot be cured by the payment of money and cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to continue if LESSEE proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof within a reasonable period of time, not to exceed two hundred seventy (270) days; or

(ii) If LESSEE abandons the PREMISES or any substantial portion thereof and such abandonment is not cured within thirty (30) days following notice from OWNER; or

(iii) If any representation or warranty of LESSEE set forth in this Lease, in any certificate delivered pursuant hereto, or in any notice, certificate, demand, submittal or request delivered to the OWNER by LESSEE pursuant to this Lease shall prove to be incorrect in any material and adverse respect as of the time when the same shall have been made and the same shall not have been remedied to the reasonable satisfaction of OWNER within thirty (30) days after notice from OWNER; or

(iv) If LESSEE shall be adjudicated bankrupt or be declared insolvent under the Federal Bankruptcy Code or any other federal or state law (as now or hereafter in effect) relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts (hereinafter collectively called "Bankruptcy Laws"), or if, LESSEE shall (a) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee, United States Trustee or liquidator (or other similar official) of LESSEE or of any substantial portion of LESSEE's property, (b) generally not pay debts as they become due or admit in writing its inability to pay its debts generally as they become due; (c) make a general assignment for the benefit of its creditors; (d) file a petition commencing a voluntary case under or seeking to take advantage of a bankruptcy law; or (e) fail to contest in a timely and appropriate manner, or in writing acquiesce to, any petition commencing an involuntary case against LESSEE pursuant to any bankruptcy law; or

(v) If an order for relief against LESSEE shall be entered in any involuntary case under the Federal Bankruptcy Code or any similar order against LESSEE shall be entered pursuant to any other bankruptcy law, or if a petition commencing an involuntary case against LESSEE or proposing the reorganization of LESSEE under the Federal Bankruptcy Code shall be filed in and approved by any court of competent jurisdiction and not be discharged or denied within sixty (60) days after such filing, or if a proceeding or case shall be commenced in any court of competent jurisdiction seeking (a) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of LESSEE, (b) the appointment of a receiver, custodian, trustee, United States Trustee or liquidator (or other similar official of LESSEE) of any substantial portion of LESSEE's property, or (c) any similar relief as to LESSEE pursuant to bankruptcy law, and any such proceeding or case shall continue undismissed, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect for sixty (60) days;

(vi) The occurrence of any breach or default under any of the Governing Documents, which breach or default continues beyond applicable notice and/or HUD approved grace periods, if any, or

(vii) The failure of the LESSEE to use the premises consistent with Section 5.1 (a) of this agreement; or

(viii) A transfer of an interest in the LESSEE which is prohibited by Section 5.1(b) of this Lease without the written approval of OWNER, which approval shall not be unreasonably withheld, delayed or conditioned.

8.2 Remedies for Default. If there shall occur an Event of Default on the part of LESSEE, the OWNER may terminate this Lease upon not less than thirty (30) additional days' written notice to LESSEE, setting forth LESSEE's uncured, continuing default and OWNER's intent to exercise its rights to terminate under this Section 8.2, whereupon unless LESSEE's alleged default has been cured before such termination date, this Lease shall be terminated after such thirty (30) day period by a written notice of same from OWNER; except that there shall be no notice or cure period for a default under Section 8.1(vi) and, in the event of such default, OWNER's written notice of same shall be effective to terminate this Lease as of the date of such notice or any later date set forth therein. The provisions of the foregoing Sections 8.1 and 8.2 shall be subject in all respects to the provisions of Article IX and particularly Sections 9.4 and 9.5, which provide certain notice and cure rights to the First Mortgagee, any Permitted Junior Mortgagee and any Subtenant of LESSEE.

8.3 Rights and Obligations upon Termination. Upon such termination of this lease, LESSEE's interest in the PREMISES and the Improvements shall automatically revert to OWNER, LESSEE shall promptly quit and surrender the PREMISES and the Improvements to OWNER, without cost to OWNER, and OWNER may, without demand and further notice, reenter and take possession of the PREMISES and the Improvements, or any part thereof, and repossess the same as OWNER's former estate by summary proceedings, ejectment or otherwise without being deemed guilty of any manner of trespass and without prejudice to any remedies which OWNER might otherwise have for arrearage of Rent or other impositions hereunder or for a prior breach of the provisions of this Lease. The obligations of LESSEE under this Lease, which arose prior to termination, shall survive such termination.

8.4 Rights Upon Termination. Upon termination of this Lease pursuant to Section 8.3, OWNER may:

(i) Retain, at the time of such termination, any Rent or other impositions paid hereunder, without any deduction, offset or recoupment whatsoever; and

(ii) Enforce its rights under any bond outstanding at the time of such termination; and

(iii) Require LESSEE to deliver to OWNER, or otherwise effectively transfer to the OWNER any and all governmental approvals and permits, and any and all rights of possession, Ownership or control LESSEE may have in and to, any and all financing arrangements, plans, specifications, and other technical documents or materials related to the DEVELOPMENT, to the extent such approvals and permits are transferable.

In addition to the above remedies of OWNER, LESSEE agrees to reimburse OWNER for any and all actual expenditures incurred and for any and all actual damages suffered by OWNER by reason of such Event of Default or such termination however caused, including all costs, claims, losses, liabilities, damages and expenses (including without limitation, reasonable attorneys' fees and costs) incurred by OWNER as a result thereof.

8.5 Performance by the OWNER. If LESSEE shall fail to make any payment or perform any act required under this Lease, OWNER may (but need not) cure such default for the account of the LESSEE. LESSEE shall promptly pay OWNER the amount of such charges, costs and expenses, as OWNER shall have reasonably incurred in curing such default, together with interest at the Base Interest Rate, all of which shall be deemed Additional Rent.

8.6 Legal Costs. LESSEE shall be liable for the reasonable and actual legal expenses of the OWNER in connection with any collection of Rent or other impositions owed under this Lease, the remedying of any default under this Lease or any termination of this Lease where such collection, remedying or termination results from an Event of Default.

8.7 Remedies Cumulative. Unless otherwise specifically provided in this Lease, no remedy herein shall be exclusive of any other remedy or remedies, and each such remedy shall be cumulative and in addition to every other remedy; and every power and remedy given by this Lease may be exercised from time to time and as often as may deemed expedient by either party. No delay or omission by OWNER to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein. The absence in this Lease of any enumeration of events of default by OWNER or remedies of either party with respect to money damages or specific performance shall not constitute a waiver by either party of its right to assert any claim or remedy available to it under law or in equity.

Article IX

LEASEHOLD MORTGAGEE'S RIGHTS

9.1 Right to Mortgage. LESSEE shall have the right from time to time to encumber its interest in the PREMISES and the Improvements with one or more mortgages in favor of the First Mortgagee, and with additional mortgages in favor of a holder of a Permitted Junior Mortgage in accordance with this Section 9.1 and other applicable provisions of this Lease. This Lease is expressly subject to the terms and conditions of the Governing Documents. Each such mortgage shall be expressly subject to the terms and conditions of this Lease and the Governing Documents. LESSEE shall give prior notice to OWNER and HUD of its intent to enter into a Permitted Junior Mortgage. Such notice and request for consent shall be made to OWNER and HUD in writing and shall be accompanied by such information as is reasonably necessary for OWNER and HUD to determine whether the proposed mortgage would constitute a "Permitted Junior Mortgage." Within reasonable time after

receipt of such written request, OWNER and HUD shall within a reasonable time either determine that the proposed mortgage satisfies the criteria or shall notify LESSEE of the specific respects in which such mortgage does not satisfy such criteria or shall indicate with reasonable specificity what further information it requires to make such determination. If OWNER or HUD does not notify LESSEE in writing within said thirty (30) day period of the specific respects in which the proposed mortgage does not satisfy the criteria or of the further information it requires to make its determination, such proposed mortgage shall be deemed to be a Permitted Junior Mortgage. If OWNER or HUD requests further information concerning the proposed mortgage, OWNER or HUD, within a reasonable time after its receipt of such information, shall confirm that the proposed mortgage is a Permitted Junior Mortgage or shall notify LESSEE of the specific respects in which such mortgage does not satisfy the criteria. If OWNER or HUD does not so notify LESSEE within such period, such proposed mortgage shall be deemed to be a Permitted Junior Mortgage. Upon request by OWNER or HUD, LESSEE shall furnish OWNER and HUD with copies of the signed commitment letter, the mortgage documents and such other information as OWNER or HUD may reasonably request and shall also furnish OWNER and HUD with a certified copy of the mortgage as executed and recorded.

9.2 No Subordination of Fee. At no time shall the OWNER's fee title in the PREMISES, or the OWNER's interest in the Lease be subordinated in any manner to the interest of any, mortgagee or lien holder of the LESSEE or any person claiming by or through the LESSEE.

9.3 Priority of Obligations. ~~Payments of Base Rent, Additional Rent and impositions under Section 3.2 hereunder shall have priority over all debt service payments.~~

9.4 Notice to Leasehold Mortgagees. So long as any leasehold mortgage which constitutes a Permitted Mortgage shall remain on LESSEE's leasehold estate hereunder and the holder thereof shall have complied with the provisions of Section 9.8 hereof, OWNER agrees, simultaneously with the giving of each notice hereunder, to give a duplicate copy thereof to the holder of each such leasehold mortgage. Each holder of a leasehold mortgage may, during the periods given to LESSEE for remedying the default, itself remedy the default or cause the same to be remedied, and OWNER agrees to accept such performance on the part of such holder as though the same had been done or performed by LESSEE.

9.5 Notice to Permitted Subtenant. So long as any tenant of LESSEE is a Permitted Subtenant, OWNER agrees, simultaneously with the giving of each notice hereunder, to give a duplicate copy thereof to the Permitted Subtenant. The Permitted Subtenant may, during the periods given to LESSEE for remedying a default hereunder, itself remedy the default or cause the same to be remedied, and OWNER agrees to accept such performance on the part of such holder as though the same had been done or performed by LESSEE.

9.6 Subtenant or Leasehold Mortgagee's Right to New Lease. In the event of the termination of this Lease prior to its stated expiration date (except pursuant to Article VI hereof), OWNER agrees that it will enter into a new lease of the PREMISES with any Permitted Subtenant or Permitted Mortgagee ("such holder") or, at the request of such holder, with an entity formed by or on behalf of such holder, for a period equal to the remainder of the Term effective as of the date of such termination, at the Base Rent and Additional Rent and upon the covenants, agreements, terms, provisions and limitations herein contained, including without limitation the provisions regarding impositions under Section 3.2 hereof, provided (i) such holder makes written request upon OWNER for such new lease within sixty (60) days from the date of notice of such termination, (ii) such holder pays or causes to be paid to OWNER at the time of the execution and delivery of such new lease any and all sums which would at the time of the execution and delivery thereof be due under this Lease but for such termination and pays or causes to be paid and all expenses including reasonable counsel fees, court costs and costs and disbursements incurred by OWNER in connection with any such termination and in connection with the execution and delivery of such new lease, less the net income from the PREMISES and the DEVELOPMENT collected by OWNER subsequent to the date of the termination of this Lease and prior to the execution and delivery of such new lease. If OWNER receives more than one written request for a new lease in accordance with the provisions of this Section 9.7, then such new lease shall be entered into first pursuant to the request of the Permitted Subtenant and, if there the leasehold mortgagee whose mortgage shall be most senior, and the written request, and its rights hereunder of any leasehold mortgagee whose leasehold mortgage is subordinate in lien shall be null and void and of no further force or effect.

Any new lease made pursuant to this Section 9.7 shall be and remain an encumbrance on the fee title to the PREMISES having the same priority thereon as this Lease, and shall without implied limitation be and remain prior to any mortgage or any lien, charge or encumbrance of the fee title of the PREMISES created by OWNER subsequent to the date of this Lease, except the Declaration of Trust.

9.7 Notice. The foregoing provisions of this Article IX shall not apply in favor of any mortgage holder unless, before OWNER has mailed a notice of default under Article IX, such mortgage holder has duly recorded its mortgage or notice thereof in any public office where such recording may be required in order to charge third persons with knowledge thereof and has given written notice to OWNER accompanied by a certified copy of such mortgage and stating the name of such holder and the address to which notices to such holder are to be mailed by OWNER.

Article X

RESTRICTIVE COVENANTS

10.1 General Obligation to Operate Consistent with the Applicable Public Housing Requirements and Agreements. LESSEE shall maintain and operate the DEVELOPMENT in compliance with the Applicable Public Housing Requirements. In addition, LESSEE shall maintain and operate the Project in accordance with this Agreement and any other agreement entered into by the LESSEE, and approved by the

OWNER and HUD by and through the OWNER with respect to the DEVELOPMENT, operation and/or maintenance of the DEVELOPMENT (collectively, the "Project Documents"). LESSEE shall also perform any and all acts required to enable the OWNER to fulfill its obligations to HUD with respect to the Public Housing Units. LESSEE shall take all actions necessary and appropriate to avoid a default (as defined in the ACC) with respect to the Development.

10.2 Prevailing Law.

In the event of a conflict between any one or more of the Applicable Public Housing Requirements and a requirement contained in any Project Document, the Applicable Public Housing Requirements shall in all instances be controlling.

10.3 Maintenance of Records.

- (a) The LESSEE shall remain responsible for maintaining sufficient records, and to take necessary action(s), to assure HUD, by and through the OWNER, that all LESSEE obligations to HUD under the Applicable Public Housing Requirements are fulfilled. However, where the ACC or other Applicable Public Housing Requirements require the OWNER to furnish reports, records, statements, certificates, documents or other information to HUD regarding the Project, the LESSEE shall furnish such reports, records, statements, certificates, documents or other information to the OWNER or otherwise satisfy the OWNER's requests with respect to such matters, upon reasonable notice. Nothing contained in this section shall be construed to relieve LESSEE of its obligation to maintain its own books and records.
- (b) It shall be the responsibility of LESSEE to maintain sufficient records, and to take necessary action(s) to assure compliance with all obligations relating to the Project under the Project Documents. LESSEE shall furnish reports, records, statements, certificates, documents or other information as necessary in order to comply with the requirements of this provision.

10.4 Admissions. The admission of tenants to the Development shall occur in accordance with the terms of the Regulatory and Operating Agreement and applicable public housing requirements.

Article XI

COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

11.1 Compliance with Federal and State Regulations. LESSEE's obligation to comply with Applicable Public Housing Requirements includes, but is not limited to, compliance with the following authorities, as the same may be amended from time to time:

- (a) The Fair Housing Act, 42 U.S.C. §3601-19, and regulations issued thereunder, 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR part 107; the fair housing poster regulations, 24 CFR part 110, and advertising guidelines, 24 CFR part 109;
- (b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and regulations issued thereunder relating to nondiscrimination in housing, 24 CFR part 1;
- (c) Age Discrimination Act of 1975, 42 U.S.C. §6101-07, and regulations issued thereunder, 24 CFR part 146;
- (d) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and regulations issued thereunder, 24 CFR part 8; the Americans with Disabilities Act, 42 U.S.C. §12181-89, and regulations issued thereunder, 28 CFR part 36;
- (e) Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. §1701, and its implementing regulations at 24 CFR part 135.
- (f)).

11.2 Uniform Administrative Requirements & Cost Principles. LESSEE shall comply with the policies, guidelines, and requirements of OMB Circular numbers A-110 and A-122, as they relate to the acceptance and use of federal funds and to 24 CFR part 85, to the extent applicable.

11.3 Records For Audit Purposes. Without limitation on any other provision of this Agreement, OWNER or Its future designee shall maintain all records concerning the Project for three (3) years subsequent to the expiration date of this Agreement, unless a longer period is required under 24 CFR §85.42. LESSEE or its future designee shall maintain records required by 24 CFR part 135 for the period that HUD requires such records to be maintained. LESSEE will give the OWNER, HUD, the

Comptroller General of the United States, the General Accounting Office, or any of their authorized representatives, access to and the right to examine, copy, or otherwise reproduce all records pertaining to the DEVELOPMENT, operation or management of the Project. The right to such access shall continue as long as the records are retained, even if such period exceeds the mandatory three-year retention period.

11.4 Audits. Not later than 120 days after the end of each Project Fiscal Year, LESSEE or its future designee shall deliver to the OWNER and, on behalf of the OWNER, to HUD, a copy of the audited financial statements of LESSEE for the preceding Project Fiscal Year, prepared in accordance with generally accepted accounting principles and accompanied by the report of an independent certified public accountant, together with a copy of any additional financial statements or reports delivered by OWNER to its partners, or other Ownership entities.

11.5 OWNER Default under the ACC. OWNER covenants to provide LESSEE, within 15 days of receipt, with a copy of any written notice of default given by HUD under the ACC with respect to the Project.

Article XII

MANDATORY DISCLAIMERS

12.1 Transfer of Grant Funds Not Deemed Assigned. The Parties acknowledge that the proposed transfer to LESSEE, or to any other participating party, of public housing funds for the development and operation of the public housing units covered under this Lease, shall not be deemed to be an assignment of such funds. Accordingly, neither LESSEE, nor any other participating party, shall succeed to any rights or benefits of the OWNER under the ACC, Mixed Finance ACC Amendment, or the HOPE VI Grant Agreement, as applicable, or attain any privileges, authorities, interests, or rights in or under the ACC, Mixed Finance ACC Amendment or the HOPE VI Grant Agreement, as applicable. LESSEE further agrees to include this disclaimer in each of its future agreements or contracts with any partner, participating party, or any other party involving the use of public housing funds for the Development.

12.2 Transferred Grant Funds Not Deemed To Create Relationship, Association, or Partnership With HUD. Nothing contained in the ACC, Mixed Finance ACC Amendment or the HOPE VI Grant Agreement, as applicable, or in any agreement between the OWNER and LESSEE, nor any act of HUD and LESSEE or the OWNER, shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited partnership or general partnership, or joint venture involving HUD.

12.3 Transfer of PREMISES and Funds Not Deemed Assignable. The parties acknowledge that the proposed transfer of the PREMISES to the LESSEE and the transfer of HOPE VI funds, public housing project and/or operating assistance from the OWNER to the LESSEE shall not be deemed to be an assignment by the OWNER of the right to receive any such funding from HUD, and the LESSEE shall not succeed to any rights or benefits of the OWNER under the ACC, the Mixed-Finance ACC

Amendment, or HOPE VI Grant Agreement, nor shall it attain any privileges, authorities, interests, or rights in or under the ACC, the Mixed Finance ACC Amendment or HOPE VI Grant Agreement. The parties acknowledge that any proposed transfer of the PREMISES to LESSEE shall not be deemed to be an assignment of the operating assistance and that, accordingly, LESSEE shall not succeed to any rights or benefits of the OWNER under the ACC, the Mixed Finance ACC Amendment, or HOPE VI Grant Agreement, nor shall it attain any privileges, authorities, interests, or rights in or under the ACC, the Mixed Finance ACC Amendment, or HOPE VI Grant Agreement. The parties acknowledge that nothing in the ACC, the Mixed Finance ACC amendment, HOPE VI Grant Agreement, or any other agreement or contract between the parties shall be deemed to create a relationship of third-party beneficiary, principal and agent, limited partnership or general partnership, joint venture, or any association or relationship involving HUD.

Article XIII **DISPOSITION AND ENCUMBRANCE**

13.1 During the term of this Agreement and during such further period when such approval may be required by law as then in effect, and subject to subsection 13.3 hereof, OWNER or LESSEE shall not demolish or dispose of its interest in the Public Housing Units (including, without limitation, by conveyance or lease of the Project or any portion thereof, or by assignment of LESSEE's rights under this Agreement), without the prior written approval of the OWNER and HUD.

13.2 Prohibited Transfers. LESSEE agrees for itself and its successors and assigns in interest hereunder that it will not, other than to a Permitted Subtenant or the (1) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises, or (2) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises, other than in accordance with the Applicable Public Housing Requirements and this Lease (including but not limited to (i) any sale at foreclosure or by the execution of any judgment of any or all of LESSEE's rights hereunder, or (ii) any Transfer by operation of law), without first obtaining OWNER's written consent thereto.

13.3 HUD restrictions on Transfers. In addition to the transfers described in paragraph 13.2 of this Section, no transfer, conveyance, or assignment other than to a Permitted Subtenant shall be made, without the prior written approval of HUD, of: (1) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to as a "Controlling Interest") of LESSEE or the Permitted Subtenant; or (2) a Controlling Interest in any entity that has a Controlling Interest in the LESSEE or the Subtenant; (each of such transfers, conveyances and assignments, together with the transfers described in paragraph (b) of this Section, is hereafter referred to as a "Transfer"). Notwithstanding the foregoing, HUD consent is not required where a business organization that has a limited interest (i.e., non-Controlling Interest and non-managing) in the LESSEE transfers a non-Controlling Interest and non-managing interest in the business organization, provided that the LESSEE provides HUD with written notice of such transfer. If LESSEE requests HUD's consent to an

internal reorganization of the LESSEE, or of any of the partners, members, or stockholders of LESSEE, HUD will not unreasonably withhold or delay such consent.

13.4 The following actions are expressly excluded from the covenants set forth in subsections 13.1, 13.2 and 13.3 hereof:

- (a) Transfer of the PREMISES to the mortgagee under any HUD-approved mortgage loan, by foreclosure or deed-in-lieu of foreclosure, or to a third-party purchaser pursuant to a foreclosure sale, provided that any such transfer shall be subject to the terms of the Declaration and this Agreement.
- (b) Dwelling leases with eligible families for the Public Housing Units.
- (c) Conveyance or dedication of land for use as streets, alleys, or other public rights-of-way, and grants and easements for the establishment, operation, and maintenance of public utilities.
- (d) Normal uses associated with the operation of the DEVELOPMENT.

13.5 Any person to whom any Transfer is attempted without the required consent shall have no claim, right or remedy whatsoever hereunder against THE OWNER, and the OWNER shall have no duty to recognize any person claiming under or through the same.

Article XIV **MISCELLANEOUS**

14.1 Construction. OWNER and LESSEE agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section thereof.

14.2 Waiver. Notwithstanding anything contained in this Ground Lease to the contrary, for so long as the OWNER and the LESSEE are affiliated, the OWNER waives (i) all approval, consent and notice rights hereunder or by operation of law or equity; and (ii) all rights or claims it may have against the LESSEE under the Ground Lease for indemnification, damages, and/or reimbursement for charges, expenses and costs it has incurred on behalf of the LESSEE or for which it would otherwise be entitled to reimbursement under the Ground Lease.

14.3 Preservation of Rights and Remedies. No delay or omission by either party in exercising any right or remedy available hereunder shall impair any such right or remedy or constitute a waiver thereof in the event of any subsequent occasion giving rise to such right or availability of remedy, whether of a similar or dissimilar nature as to non-federal issues.

14.4 Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of Florida.

14.5 Counterparts. This Lease may be executed in counterparts and all such counterparts shall constitute one single Lease.

14.6 No Waiver. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall, not be deemed to be a waiver by said party, of any of its rights hereunder. No waiver by either party at any time, either express or implied, of any breach of any other provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the cause of any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and, no one of them whether exercised by said party or not, shall be deemed to be in exclusion of any other; and two or more or all of such rights and remedies may be exercised at the same time.

14.7 Headings. The headings used for the various articles and sections of this Lease are used only as a matter of convenience for reference, and are not to be construed as part of this Lease or to be used in determining the intent of the parties of this Lease.

14.8 Disclaimer of Relationships Subject to Applicable Law. Nothing contained in the ACC or Grant Agreement or in any agreement between the OWNER and LESSEE, nor any act of HUD or the OWNER, shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD, except between HUD and the OWNER as provided under the terms of the ACC or Grant Agreement; provided, however, that the Mortgagee shall be entitled to rely upon Section 11(D) of the Mixed-Finance Amendment and to foreclose upon its mortgage and/or exercise any rights or remedies thereunder, and in doing so, succeed to the status of LESSEE under said Lease agreement hereunder.

14.9 Partial Invalidity. If any terms, covenant, provision or condition of this Lease or the application thereof to any person or circumstances shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, the remaining terms, covenants, provisions and conditions of this Lease and their application to persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties, and in the place of such invalid or unenforceable provision there shall be substituted a like, but valid and enforceable, provision which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the parties.

14.10 Successors and Assigns: Prohibition of Assignment Without Consent.

This Lease shall be binding upon and inure to the benefit of the successors and assigns of each of the parties, except that LESSEE may not assign or sublet its interest in this Agreement without the prior written consent of the OWNER. Any attempted transfer by LESSEE without such consents will be null and void. Notwithstanding this Section 14.10 or any other provision of this Agreement to the contrary, LESSEE shall have the right to lease the PREMISES to a Permitted Subtenant under terms and conditions determined by LESSEE in its sole discretion without the consent of the OWNER provided the LESSEE's subtenant agrees to use the PREMISES in support of the DEVELOPMENT as a public housing development.

14.11 Estoppel Certificate. Each party agrees from time to time, upon no less than fifteen (15) days' prior notice from the other, to execute, acknowledge and deliver to the other a statement certifying that (i) this Lease is unmodified and in full force and effect (or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the rent has been paid, and that no additional rent or other payments are due under this Lease (or if additional rent or other payments are due, the nature and amount of the same), and (iii) whether there exists any uncured default by the other party, or any defense, offset, or counterclaim against the other party, and, if so, the nature of such default, defense, offset or counterclaim. Any such statement delivered pursuant to this Section 10.7 may be relied upon by any prospective purchaser or holder of a mortgage of the leasehold interest hereunder or any prospective holder of a lease from LESSEE or any other provision of this Agreement to the contrary, such holder of a mortgage or lease.

14.12 Recordable Form of Lease. Simultaneously with the delivery of this Lease the parties have delivered a counterpart original of this Lease or notice or short form of this Lease, which LESSEE shall record in the public office in which required to put third parties on notice. If this Lease is terminated before the Term expires, the parties shall execute, deliver and record an instrument acknowledging such fact and the date of termination of this Lease.

14.13 Notice. Any notice or other communication given or made pursuant to this Agreement shall be in writing and shall be deemed given if (i) delivered personally or by courier, (ii) sent by overnight express delivery, or (iii) mailed by registered or certified mail (return receipt requested), postage prepaid, to a party at its respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party);

If to LESSEE:

MDSC HOMES, INC
1401 NW 7th Street
Miami, Florida 33125

If to OWNER:

MIAMI-DADE COUNTY
111 N. W. 1st Street
Miami, Florida 33130

If to HUD:

United States Department of Housing and
Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410
Attn: Assistant Secretary of Public and Indian
Housing

and

Miami Field Office
Director of Public Housing
Brickell Plaza Federal Building
909 SE First Avenue, Room 500
Miami, Florida 33131-3028

All such notices and other communications shall be deemed given on the date of personal or local courier delivery, delivery to overnight courier or express delivery service, or deposit in the United States Mail, and shall be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of delivery by overnight courier or express delivery service, on the date following dispatch, and (iii) in the case of mailing, on the date specified in the return receipt therefore. For the sake of convenience and rapidity of transmission, copies of notices may be sent by facsimile transmission, but such transmission alone shall not be deemed to satisfy the notice requirements of this Agreement absent receipt or the giving of notice by one of the other means stated above.

14.14 Compliance with HUD Requirements. OWNER and LESSEE shall comply with all HUD requirements applicable to the leasing by a public housing authority of its land as contemplated hereunder and shall abide by all applicable policies and procedures and make all requisite submissions to HUD, which may be required in connection with the transactions described herein.

14.15 Entire Agreement. This instrument contains all the agreements made between the parties hereto with respect to the subject matter hereof. This Lease may be amended by mutual agreement of the OWNER and LESSEE, subject to the prior written approval of HUD, and provided that all amendments must be in writing and signed by both parties and that no amendment shall impair the obligations of the Lessee to develop and operate the Development in accordance with the Applicable Public Housing Requirements.

14.16 HUD Mandatory Provisions.

(a) The units in the DEVELOPMENT are subjected to, and benefited by, the terms and conditions of the Applicable Public Housing Requirements. The provisions of the Applicable Public Housing Requirements and this Section are intended to create a covenant running with the land and, subject to the terms and benefits of the

Applicable Public Housing Requirements, to encumber and benefit the DEVELOPMENT for the entire Term of this Lease. The Applicable Public Housing Requirements and this Section shall be binding upon OWNER and LESSEE and each of their respective successors and assigns, including, without limitation, any entity which succeeds to LESSEE's interest in the Premises by foreclosure or an instrument in lieu of foreclosure, and expressly include, but are not limited to, the following obligations:

(b) Except as otherwise provided in the Act, the units in the DEVELOPMENT shall be operated under the terms and conditions applicable to public housing, as set forth in the Applicable Public Housing Requirements, during the 40-year period that begins on the date on which the DEVELOPMENT becomes available for occupancy, as required by section 9(d)(3)(A) of the Act (or any successor provision).

(c) Except as otherwise provided in the Act, the Development shall be maintained and operated under the terms and conditions applicable to public housing, as set forth in the Applicable Public Housing Requirements, during the 20-year period that begins on the latest date on which modernization with public housing capital funds is completed, as required by section 9(d)(3)(B) of the Act (or any successor provision).

(d) Neither the units in the DEVELOPMENT, nor any part thereof, may be demolished other than in accordance with the Applicable Public Housing Requirements.

(e) LESSEE agrees that, with the exception of: (A) the mortgages encumbering the PREMISES that have been approved by HUD, or any other Permitted Encumbrances listed in Exhibit B; (B) dwelling leases with eligible families for the public housing units; and (C) normal uses associated with the operation of the DEVELOPMENT, neither the DEVELOPMENT nor any portion thereof shall be encumbered in any way, nor the assets of the DEVELOPMENT pledged as collateral for a loan, without the prior written approval of OWNER and HUD.

(f) LESSEE shall take no action to effectuate any material amendments, modifications or any other alterations to the plans and specifications for the DEVELOPMENT unless OWNER has approved such, in writing and in advance. OWNER's execution of this Lease also constitutes a certification to HUD under 24 CFR § 941.402 that prior to making any such amendments, modifications or alterations to the plans and specifications that such amendments, modifications or alterations are in accordance with its design and construction standards at 24 CFR § 941.203.

(g) LESSEE shall not make any alteration, improvement or addition to the PREMISES having a cost greater than One Hundred Thousand Dollars (\$100,000.00), or such lesser amount as may be provided in the Management Agreement and/or Plan, or demolish any portion thereof, without first presenting to OWNER complete plans and specifications therefor and obtaining OWNER'S and HUD's written consent thereto (which consent shall not unreasonably be withheld so long as, in OWNER'S and HUD's judgment such alteration, improvement, addition or demolition will not violate the Applicable Public Housing Requirements or this Lease, or impair the value of the Property). HUD's right under the preceding sentence shall be extinguished upon the

release of the Declaration of Restrictive Covenants in favor of HUD encumbering the PREMISES. Any improvements made to the DEVELOPMENT by either party hereto shall be made only in good and workmanlike manner using new, materials of the same quality as the original improvements, and in accordance with all applicable building codes and the Applicable Public Housing Requirements.

(h) If any portion of this Section conflicts with Section 11 of the ACC, the provisions of Section 11 of the ACC shall control.

14.17 HUD's Rights on Event of Default.

Notwithstanding the Owner's and Lessee's waiver provision contained in Article VIII, upon the occurrence of an event of default that also constitutes a substantial default under the ACC, HUD may:

(a) require OWNER to convey to HUD its fee simple interest in the DEVELOPMENT and ensure the LESSEE's conveyance to HUD of its leasehold interest in the DEVELOPMENT, if, in HUD's determination (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of the Act; or

(b) require LESSEE to deliver possession and control of the DEVELOPMENT to HUD; or

(c) exercise any other right or remedy existing under applicable law, or available at equity. HUD's exercise or non-exercise of any right or remedy under the ACC shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

(d) If HUD acquires title to, or possession of, the DEVELOPMENT, HUD shall reconvey, or redeliver possession of, the DEVELOPMENT to the OWNER and LESSEE in accordance with their respective interests in the DEVELOPMENT: (i) upon a determination by HUD that the substantial default under the ACC has been cured and that the DEVELOPMENT will thereafter be operated in accordance with the terms of the ACC; or (ii) after the termination of HUD's obligation to make annual contributions available, unless there are any obligations or covenants of the OWNER to HUD that are then in default.

(e) During the Term of this Lease, and so long as LESSEE shall not be in default of its obligations hereunder, HUD agrees that in the event of a substantial default by OWNER under the ACC, HUD shall exercise any remedies or sanctions authorized under the ACC, including taking possession of the OWNER'S interest in the DEVELOPMENT, in such a manner as not to disturb LESSEE'S rights under this Lease or the Regulatory Agreement.

14.18 Access. LESSEE agrees to grant a right of access to the OWNER, HUD, the Comptroller General of the United States, or any of their authorized representatives,

with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts.

14.19 Conflicts. In the event of a conflict or inconsistency between any requirement contained in this Lease (or between any requirement contained in any document referred to in this Lease, including any Mortgage), and the Applicable Public Housing Requirements, the Applicable Public Hearing Requirements shall in all instances be controlling.

EXECUTED as a sealed instrument on the day and year first above written.

OWNER:

Print Name _____

MIAMI-DADE COUNTY

Print Name _____

By: _____

Name _____

Title: _____

Reviewed for form and
legal sufficiency:

Terrence A. Smith
Assistant County Attorney

LESSEE:

MDSC HOMES, INC., a Florida non-profit corporation

Print Name _____

By: _____

Print Name _____

Name: _____

Title: _____

STATE OF FLORIDA)
):SS.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2004, by _____, as _____ of Miami-Dade County, Inc., who is personally known to me or who presented _____ as identification.

Name: _____
NOTARY PUBLIC
STATE OF FLORIDA AT LARGE

Commission No.: _____

My Commission Expires:

STATE OF FLORIDA)
):SS.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2004, by _____, as _____ of MDSC HOMES, Inc. and who is personally known to me or who presented _____ as identification.

Name: _____
NOTARY PUBLIC
STATE OF FLORIDA AT LARGE

Commission No.: _____

My Commission Expires:

2427983_v2

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EXHIBIT A

The West 406 feet of Tract 3 of “Public Housing Project Florida 5-4”, recorded in Plat Book 57, at Page 48, of the Public Records of Miami-Dade County, Florida.

and

All of Tract 1 of “Public Housing Project Florida 5-20”, recorded in Plat Book 84, at Page 31, of the Public Records of Miami-Dade County, Florida